

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

STEVEN MICHAEL WILLIAMS,

Plaintiff,

6:13-cv-1864-TC

v.

ORDER, and
FINDINGS AND
RECOMMENDATION

OREGON STATE HOSPITAL,
et al.,

Defendants.

COFFIN, Magistrate Judge.

Plaintiff's Application to proceed *in forma pauperis* (#6) is allowed. However, for the reasons set forth below, plaintiff's complaint should be dismissed on the grounds that it is barred by *res judicata* and/or claim preclusion.

Plaintiff filed a complaint alleging "I am suing the Oregon State Hospital for the tort of negligence." Complaint (#1) p. 4. Plaintiff further alleges that in February, 2013,

while he was being evaluated at the Oregon State Hospital, he was assaulted by "fellow patient," with a history of assaultive behavior, and seeks damages for his injuries. Plaintiff names "Melisa Rose - Staff ... John Doe - Staff ... (and) David Straiter - patient" as defendants and alleges that "all responsible staff to be named as a later date." Id. p. 3.

Plaintiff filed a previous complaint concerning the incident he complains of in this case. In 6:13-cv-00944-TC, plaintiff's original *pro se* complaint was dismissed for failure to state a claim. The court entered an order advising plaintiff of the pleading requirements of the federal rules, of the "state action requirement" for proceedings under 42 U.S. S. § 1983 and that *respondeat superior* is not a proper basis for § 1983 liability. Plaintiff was allowed 30 days to file an amended complaint curing the deficiencies set forth in the court's order.

Plaintiff filed an amended complaint. However, the amended complaint did not cure the deficiencies that led to the dismissal of the original complaint and failed to state a claim.

Therefore, a Findings and Recommendation (#12) entered August 8, 2013, recommended that plaintiff's complaint be dismissed and that the clerk enter a judgment dismissing the case with prejudice. The Findings and Recommendation was

adopted by the Order (#17) entered 12/12/2013 and a Judgment of dismissal was entered (#18).

Under the doctrine of *res judicata* or claim preclusion, a final judgment on the merits of an action precludes the parties or their privies from re-litigating issues that were or could have been raised in the prior action. Allen V. McCurry, 440 U.S. 90, 94 (1980); Manufactured Home Communities, Inc. V. City of San Jose, 420 F.3d 1022, 1031 (9th Cir. 2005).

The elements necessary to establish *res judicata* are (1) an identity of the claims; (2) a final judgment on the merits; and (3) privity between the parties. Headwaters, Inc v. U.S. Forest Service, 399 F.3d 1047, 1052 (9th Cir. 2005).

In this case, plaintiff is attempting to do exactly what is prohibited under the doctrine of *res judicata*. He has previously filed a federal lawsuit based on the same circumstances and nucleus of facts as set forth in the complaint before the court in this case.

The claims and some of the defendants are the same in this case as they were in the previous case. Although "Melisa Rose" was not named as a defendant in the previous lawsuit, she is alleged to be "staff" at the Oregon State Hospital, and is in privity with the defendants in Civ. No. 6:13-cv-944-TC.

Judge Aiken entered a judgment dismissing plaintiff's

previous lawsuit on 12/12/2013, following an order dismissing the complaint for failure to state a claim.

Therefore, the requisites elements for *res judicata* re met and plaintiff's claims in this case are barred.

Plaintiff's complaint should be dismissed *sua sponte*. The Clerk of the Court should be directed to enter an judgment dismissing this action with prejudice.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

Any appeal from an order adopting this Finding and Recommendation or Judgment of dismissal would be frivolous and not taken in good faith.

DATED this 16 day of December, 2013.



Thomas M. Coffin
United States Magistrate Judge